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January 31, 2007

Via Fax & Federal Express
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Phillip N. Hogen, Chairman
National Indian Gaming Commission
1441 L. Street N.W., Suite #9100
Washington, D.C., 20005

Mr. Chuck Choney, Commissioner
National Indian Gaming Commission
1441 L. Street N.W., Suite #9100
Washington, D.C., 20005

Mr. Norm DesRosiers, Commissioner
National Indian Gaming Commission
1441 L. Street N.W., Suite #9100
Washington, D.C., 20005

**Re: Comments On Technical Standards For "Electronic, Computer, Or
Other Technologic Aids" Used In The Play Of Class II Games**

Dear Chairman Hogen, Commissioner Choney & Commissioner DesRosiers:

Please accept this letter directed to you on behalf of my client, American Gaming Systems ("AGS"), a vendor of various gaming devices including but not limited to games currently meeting the standards of Class II games under the Indian Gaming Regulatory Act ("IGRA") and regulations promulgated by the National Indian Gaming Commission ("NIGC"). The purpose of this letter is to provide comments on the NIGC's proposed Technical Standards for "Electronic, Computer, Or Other Technologic Aids" used in the play of Class II Games ("Technical Standards").

The Commission should not infer from AGS's submission of these comments

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that it does not generally support those proposed Technical Standards which it participated in developing with the technical standards working group and which were submitted to the NIGC by the Tribal Advisory Committee on January 24, 2007. However it is because those proposed standards do not completely address the concerns of AGS and other similarly situated vendors and some Tribal gaming agencies with regard to imposed regulation implementation date or the provisions regarding grandfathering that these comments are being provided.

Since September 2006, AGS has been an active participant in the Technical Standards Working Group which has worked closely with the Tribal Advisory Committee. In furtherance of that activity, a set of proposed Technical Standards were submitted to the NIGC through the Tribal Advisory Committee on January 24, 2007. Those proposed Technical Standards were made part of a formal presentation before the Commission at the Game Classifications Standards Advisory Committee meeting held at the Hyatt Regency Hotel in Crystal City on January 25, 2007.

Although the proposed Technical Standards is the product of many hours of work undertaken by most of the Class II gaming manufacturers, Tribal representatives, attorneys representing various interests, NIGC staff and technical representatives of various recognized gaming laboratories, they do not provide total guidance on some selective areas, including but not limited to the issues of regulation implementation date and grandfathering. I recognize that these two areas are as significant to the Commission as they are to many Tribal agencies and Class II game vendors.

Since the Indian Gaming Regulatory Act was first enacted in 1988 and subsequently amended, Tribes and Class II game vendors have struggled with complying with game classification standards which for the most part were developed through Federal court decisions and the Commission's Advisory Opinion process. Those two sources for game classification have over the years been detrimentally relied upon by both Class II games vendors as well as Tribal gaming regulators in developing and operating Class II games in authorized tribal gaming venues. This process has not been without expense to all parties involved. Since the guidelines developed by both court and NIGC process have been well defined, it only makes sense that those games which have been determined to be Class II games by either Federal court decision or NIGC advisory opinion should be grandfathered under the proposed Technical Standards. A proposed provision meeting such guideline is as

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follows:

For purposes of exception from these regulations as a grandfathered Class II game or Class II game electronic aid, each manufacturer, owner or operator of a Class II game played with electronic aids so grandfathered, shall provide to the National Indian Gaming Commission within (90) ninety days of the effective date of these regulations, a list containing the model, serial number, theme if appropriate and any other identifying information concerning each grandfathered game. For purposes of this exception, a grandfathered game shall mean any game, including theme variance of such game, that has been determined to be a Class II game or electronic aid to a Class II game within the guidelines set forth in the Indian Gaming Regulatory Act and/or regulations promulgated by the National Indian Gaming Commission and confirmed by any of the following means:

1. NIGC Advisory Opinion;
2. Federal Court Decision;
3. Tribal Gaming Authority with the concurrence of a laboratory report from a recognized gaming laboratory and a legal opinion from the manufacturer as to the game meeting existing standards under the Indian Gaming Regulatory Act and the NIGC regulations as a Class II game prior to the effective date of these regulations.

Both the proposed technical standards as well as those originally proposed by the NIGC provide for various technical and administrative tasks to be undertaken by both Tribal gaming agencies as well as manufacturers of Class II games. In addition, the Commission must recognize that Tribes and vendors alike have substantial investments in games currently in play or storage and the economic effect of either replacing such equipment, modifying it for compliance under the final approved Technical Standards or merely having it tested for compliance is not without substantial expense not to mention the time to complete any one of those three aforementioned tasks.

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The Commission is surely mindful of the fact that some Tribes with substantially large gaming facilities are better equipped financially to handle such costs while other smaller gaming facilities that may be operating only a small quantity of Class II games in remote areas may not have the financial resources to either replace, modify or even incur the substantial expense of testing. Many of these factors may support a greater interest in grandfathering all currently operating Class II games if the Commission is not prepared to issue regulations consistent with that approach set forth above. At the very least, the Commission should allow a reasonable period time to complete any one of the three aforementioned tasks necessary once these regulations are implemented. Accordingly, a tier approach is suggested.

A tier approach might include a minimum time to submit a game to a recognized gaming laboratory for compliance review. Such submission time might vary depending upon whether the game is an existing operating game or a newly developed game. The latter will certainly be required due to the R&D necessary to develop a new game. During the period that the game has been submitted for testing it might be provisionally allowed to operate for a specified period such as (90) ninety to (120) one hundred twenty days with similar periods of extension being allotted for delays in testing completion due to no fault of either the submitting gaming agency or game manufacturer.

For ease of game audit, the Commission might want to use an implementation date of (9) nine to (12) twelve months following effective date of the regulations to require all testing of existing or replacement games to be completed subject only to reasonable extensions upon showing of good cause. Manufacturer and gaming laboratory input as to specific estimated times for completion would be most valuable to be considered by the Commission in effectively determining a suitable effective date for game compliance following submission of a game to a testing lab.


The technical standards work group has, within a limited time, effectively developed an initial framework for suitable technical Class II game standards. AGS would strongly recommend that the NIGC continue to work with the Tribal Advisory Committee and the technical standards work group toward developing a suitable implementation date for the regulations as well as satisfactory grandfathering provisions.

AGS would further suggest that the NIGC publish the proposed technical standards recently

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submitted by the Tribal Advisory Committee and thereafter take general comment followed by joint meetings with the Tribal Advisory Committee's and the technical standards working group in the same manner in which the Tribal Advisory Committee proposed technical standards were developed. That process not only appears to be highly effective, but continues to foster mutual trust in jointly working out acceptable standards for both the Class II gaming industry to follow as well as for the Commission to enforce.

Very truly yours,

A handwritten signature in black ink, appearing to read "Stephen A. Lenske", written in a cursive style.

STEPHEN A. LENSKE
of Lenske, Lenske & Abramson
A Law Corporation

SAL: mlr
cc: American Gaming Systems
cc: Tribal Advisory Committee
cc: Joe Valandra
cc: Michael Gross
cc: Penny Coleman

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